

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

DC CIVIL APPEAL NO. 9 OF 2021

(Originating from in Civil Case No. 20 of 2019 of the District Court of Dodoma)

JUDGE (RTD) EDWARD ANTONY MWESIUMO & 7 OTHERS.....APPELLANTS

VERSUS

JOEL SAMUMBARESPONDENT

JUDGMENT

16/06/2022 & 15/08/2022

KAGOMBA, J

In this appeal, JUDGE (RTD) EDWARD ANTONY MWESIUMO, AGATHA SENYAGWA, CHARLES MOSHA, MUHIDINI MWIKARI MSHANA, JEREMIA SEMBOSI, ELIABU MALODA, JUMA KACHEMELA and KASILATI MWAKIBETE, being the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondent respectively, (henceforth collectively referred to as “the appellants”) are challenging the decision of the District Court of Dodoma at Dodoma (henceforth “the trial court”) in Civil Case No. 20 of 2019, which was made in favour of JOEL SAMUMBA, the respondent herein in a dispute concerning leadership of the Tanzania Agricultural Societies (TASO).

The appellants have come up with the following nine (9) grounds of appeal -

- (1) That, the Honorable trial Magistrate erred in law and in facts in not holding that the Respondent is not a member of TASO in the circumstance of the case.
- (2) That, the Honorable trial Magistrate erred in law and in facts in holding that there was TASO election on 30/12/2017 while TASO'S registration as a society was still cancelled; viewed in the light of the testimony of DW2 Paulo Magoko Charles, the Assistant Registrar of Societies and fact that TASO's election on that date was not an issue in the suit.
- (3) That, the Honorable trial Magistrate erred in law and in facts in failing to take into consideration the fact that the Hon. Minister for Home Affairs in his letter dated 14/5/2018 tendered as Exhibit "D2" collectively, nullified the purported TASO election dated 30/12/2017.
- (4) That, the Honorable trial Magistrate erred in law and in facts in portraying a clear bias against the Appellants throughout the trial and in making an incomprehensive recording of the proceedings which distorted the meaning of the testimonies of the Appellants' witnesses to a great extent; and in superimposing matters which are not part of the evidence.
- (5) That, having properly held that TASO'S registration was revoked by the Registrar of Societies on 3/5/2017, the Honorable trial Magistrate erred in law and in facts in holding that the respondent

was an Acting TASO Chairman who through him the Minister of Home Affairs restored TASO'S registration by his letter addressed to the Acting TASO Chairman dated 11/12/2017; which letter was not even properly admitted in evidence and while the restoration of society's registration is not done by the Minister under the law.

- (6) That, the Honorable trial Magistrate erred in law and in facts in holding that PW2 ever became an Acting TASO Chairman; which post is nonexistent in Exhibit P3; the Constitution of TASO.
- (7) That, the Honorable trial Magistrate erred in law and in facts in tasking the Appellants in the judgment that they ought to have proved none issues in order to win the suit.
- (8) That, the Honorable trial Magistrate erred in law and in facts in declaring the appellants as not being members of TASO, which was a non-issue during the trial.
- (9) That, the Honorable trial Magistrate erred in law and facts in condemning the appellants to pay costs of the suit in the circumstances whereby the appellants never at any occasion during or prior to the hearing of the suit claimed as leaders of TASO as alleged

As a brief background, in the trial court, the respondent claiming himself to be a Member of TASO with registration No. 0116 sued the late Lt. (Rtd) Shabani Muyombo and the appellants alleging that the late Lt. (Rtd) Shabani Muyombo was not a leader of TASO, as he purported to be on page

22 of *NIPASHE* Newspaper dated 23/8/2019, where he was pictured seating among the appellants, with a caption that he was the Chairman of TASO.

The respondent alleged that he participated in the General Meeting of TASO and contested in the election held on 30/12/2017 where the appellants were neither amongst the contestants nor the elected leaders. The respondent was therefore surprised that, the appellants were pictured in the said *NIPASHE* Newspaper with the late Lt. (Rtd) Shabani Muyombo, posing as the Chairman of TASO and he was further surprised that the appellants were asking the Minister for Agriculture to hand over back properties of TASO to them. The respondent alleged that he did not recall if there had been any other TASO election held apart from that of 30/12/2017, where the said Lt. (Rtd) Shabani Muyombo didn't contest and *ipso facto* was not elected the TASO Chairman. Hence, the respondent instituted the said suit to protect the Constitution of TASO. He sought court declaration that the said Lt. (Rtd) Shabani Muyombo is not a leader of TASO and prayed for permanent injunction against the appellants to restrain them from interfering with the activities of TASO.

Despite of the facts that the appellants denied to be leaders of TASO, argued that the respondent was not a member of TASO and further argued that the purported TASO election of 30/12/2017 was nonexistent as TASO was during that time revoked by the Minister for Home Affairs, the trial court found that the respondent is a TASO member, TASO did exist and the TASO election of 30/12/2017 was duly held. The trial court proceeded to enter judgment for the respondent with costs, declared that the late Lt. (Rtd) Shabani Muyombo and the appellants were not legal members of TASO,

issued the permanent injunction sought and ordered the elected leaders of TASO to proceed with TASO activities as usual. It is this decision which challenge in this appeal.

The hearing of the appeal proceeded by way of written submissions, following a court order to that effect. Mr. Paul Nyangarika, learned Advocate from Nyangarika & Co. Advocates, drew and filed the submission in chief and the rejoinder for the appellants, while Mr. Onesmo David Martin Issiah, learned Advocate from Sosta Advocates drew and filed the reply submission for the respondent.

On the 1st ground of appeal, Mr. Nyangarika submitted that the membership card of the respondent, Exhibit P1, which the trial court relied upon to decide that he was a member of TASO, was not read in court, hence it should be expunged. He cited the case of **Semeni Mgonela Chiwanza V. R**, Criminal Appeal No. 49 of 2019, CAT at Dodoma (unreported).

Mr. Nyangarika argued the 2nd, 3rd, 5th and 6th grounds of appeal jointly to the effect that the trial Magistrate erred in holding that there was TASO election on 30/12/2017 while TASO registration was still cancelled.

On the 4th ground of appeal, Mr. Nyangarika alleged there were clear bias shown by the trial Magistrate in admitting Exhibit P3, which is a copy of TASO Constitution; in using statements not supported by pleadings and testimonies adduced; in justifying that the membership number 0116 belonged to the respondent and not to one Theresia Musso; in holding that the respondent was ordered by the Minister of Home affairs without there

being evidence to support that conclusion and in holding that TASO properly held its election on 30/5/2019.

With regard to the 7th and 8th grounds of appeal, Mr. Nyangarika submitted to the effect that the trial Magistrate erred by tasking the appellants to prove non-issues in the suit and in declaring the appellants as not being members of TASO while that was not one of the issues in the suit.

Lastly, Mr. Nyangarika submitted on the 9th ground of appeal that the trial Magistrate erred in condemning the appellants to paying costs while they were not leaders of TASO as per court's own finding.

Replying to the above submission, Mr. Issiah for the respondent, submitted with regard to the 1st ground of appeal that the respondent adhered to section 110(1)(2) of the Evidence Act, [Cap 6 R.E 2019] to prove his *locus standi* and establish his interest in the case by producing his membership card No.0116 (Exhibit P1) and that the advocate for the appellants cross-examined on the same where the doubts were cleared. He argued that the new claims are nothing but an afterthought. He distinguished the principle in the cited case of **Semeni Mgonela Chiwanza V. R**, (supra) for being a criminal case while the case in hand is a civil case, whereby the requirement to read out a document after its admission is not established in our jurisdiction.

With regard to the 2nd, 3rd, 4th, 5th and 6th grounds of appeal which challenged the existence and legality of the TASO election of 30/12/2017, Mr. Issiah supported the trial court decision in that it addressed the issues

framed in line with the evidence adduced in court. He said, the gist of the suit was the action of the appellants to announce themselves as TASO leaders while knowing that there were lawful leaders elected on 30/12/2017 following the order of the Minister of Home Affairs. He argued that following the temporary ban of TASO activities, the Minister ordered an election to be conducted to get new leaders as a condition to lift the ban. Hence the election of 30/12/2017 was in compliance with the said order of the Minister. Mr. Issiah argued that if the appellants were against the said order of the Minister to appoint the acting Chairman and to order him conduct election, they should have pursued known legal procedures against the administrative actions and decisions of the Minister.

On the 4th ground of appeal, Mr. Issiah submitted that the appellants failed to prove the alleged bias, as there were two Magistrates in the case, and the first Magistrate Hon. R.J. Magoti-RM, did withdraw from the case and another Magistrate took over. He said, the trial Magistrate followed the law.

On the 7th and 8th grounds of appeal, Mr. Issiah submitted that the trial Magistrate was right to decide that the appellants were not members of TASO, because it was one of the reliefs sought by the respondent. He added that the decision by the trial Magistrate based of the testimony of PW2 and the order of the Minister of Home Affairs.

Mr. Issiah submitted with regard to the 9th ground of appeal that the award of costs is under the jurisdiction of the court, and the same were

awarded to cover the costs of the case for the respondent who emerged victorious. He prayed the court to dismiss the appeal.

In his rejoinder, Mr. Nyangarika reiterated mainly his submission in chief. He argued that the membership card of the respondent should be expunged for not observing requirements for admission of documentary evidence which applies to criminal and civil cases alike. He added that the respondent lacked *locus standi* in the event that the alleged membership card No. 0116 belonged to another person. He prayed the court to allow the appeal with costs.

From the submissions made by the parties and what obtains in records of the trial court, the main issue is whether the appeal is meritorious.

As correctly found by the trial court the issues during trial were centered on the TASO membership status of the respondent, because that went hand in hand with his *locus standi*; the legal existence of TASO as on 30/12/2017 in view of the ban by the Registrar of Civil Societies; the truth on the existence of election alleged to be conducted on 30/12/2017 and the reliefs each party was entitled to. In determining the merit of this appeal, this court, being the first appellate court, shall be examining afresh the evidence adduced during trial to find if the decision reached by the trial court was well-founded in law. The court shall be guided by the established principle of law that each case must be decided on its own set of fact and obtaining circumstances. (See **Athumani Rashid vs. Republic** (Criminal Appeal 110 of 2012) [2012] TZCA 143 (25 June 2012). As such, peculiar facts of this case shall be duly considered.

The first issue determined by the trial court was whether the respondent was TASO member as he alleged. This issue was so significant that if the respondent was not a member of TASO the case would have collapsed immediately for lack of *locus standi*. To prove this issue the respondent tendered his membership ID Card with No. 0116 (**Exhibit P1**). On page 28 of the typed proceedings, the exhibit was admitted without any objection from Mr. Nyangarika, who was representing the appellants as he does in this appeal. Mr. Nyagarika's argument before this court is that the same ought to have been read out in court after its admission.

It is an established principle of law that in admission of a documentary evidence, four stages must be observed which include reading it out in court. (See **Mabula Mbonje & Others vs Republic** (Criminal Appeal 557 of 2016) [2020] TZCA 1740 (20 August 2020; **Bernard Thobias Joseph & Another vs Republic** (Criminal Appeal 414 of 2018[2021] TZCA 113 (14 April 2021; **Evarist Nyamtemba vs Republic** (Criminal Appeal 196 of 2020) [2021] TZCA 294 (12 July 2021); **Rashid Kazimoto & Another vs Republic** (Criminal Appeal 458 of 2016) [2016] TZCA 464(06 December 2019) to mention but a few, all being available at www.Tanzlii.org). Mr. Issiah, expressed the view that such a legal principle is not established in our jurisprudence with regard to civil cases. This view does not seem to be supported.

In **Bulungu Nzungu vs Republic** (Criminal Appeal 39 of 2018) [2022] TZCA 454 (21 July 2022) available at www.Tanzlii.org, the Court of Appeal had this to say, on page 10 of its typed judgment, with regard to the reading over of documentary exhibits upon admission:

*"It is now a well-established principle in the law of evidence as applicable in trial of cases, **both civil and criminal**, that generally once a document is admitted in evidence after clearance by the person against whom it is tendered, **it must be read over to that person**".*

[Emphasis added]

In **Kurubone Bagirigwa & 3 Others vs Republic** (Criminal Appeal 132 OF 2015) [2016] TZCA 272 (28 October 2016), available at www.Tanzlii.org, the Court of Appeal in dealing with admissibility of a confessional statement expounded the reasons for reading over documentary evidence after its admission. The following excerpt from this decision merits to be reproduced in *extenso*, thus:

*"It is settled law that whenever a confession statement is intended to be introduced in evidence, it must be initially cleared for admission and then actually admitted before it can be read out. (See **WALII ABDALLAH KIBUTWA AND TWO OTHERS VS REPUBLIC**, Criminal Appeal No. 405 of 2015 (Unreported), the Court categorically held that failure to read the contents of the cautioned statements of accused persons after being admitted is fatal. This is because, although the record shows that, the statements were admitted without objection, both the maker and their co-accused had inherent right to know the contents of those statements if they were to effectively cross-examine on them. **We have to emphasize this because the***

right to adversarial proceedings which is one of the elements of fair hearing within Article 13(6)(a) of our Constitution means that each party to a trial be it criminal or civil, must in principle have the opportunity to have knowledge of and comment on all evidence adduced or observations filed or made with a view to influencing the court's decision". [Emphasis added]

In the case at hand, the document in contention was a membership card. It is not disputed that the same was not read out in court after being admitted. Applying the principle set out in the various decisions of the Court of Appeal above cited, I proceed to expunge the **Exhibit P1** accordingly.

After expunging **Exhibit P1**, what follows is to examine if the remaining evidence suffices to support the decision reached by the trial court. Having read again the testimony of PW1, on his TASO membership status, I have no hesitation whatsoever to make a finding that he was able to adduce sufficient evidence, on balance of probabilities, that he was a member of TASO. In reaching this conclusion I have considered his oral testimony where he testified that he was given the membership card on 10/1/2012 by Vice Chairman of TASO Central zone.

I have also considered the fact that usually a membership card contains very little readable contents. As the testimony of PW1 has been able to state when and who gave him the card, I find his membership sufficiently proved.

Regarding the complaint that there was another TASO member by the name of Theresia Masso with same membership card number, the trial proceedings reveals that when the respondent was being cross-examined by Mr. Nyangarika on page 34 of typed proceedings, he clarified that there were two forms, the hand written and typed one. He said that while in the additional documents card number 0116 belonged to Theresia Masso, in the handwritten one, the same membership card number belonged to him. He clarified that if a member did not pay membership fee, by each end of March, his membership card would be seized. With that unopposed explanation, I think the testimony availed by the respondent was sufficient to prove his TASO membership. To deny this testimony is to demand a standard of proof higher than the one set by the law, which is a balance of probabilities.

Regarding the issue whether TASO was in existence on 30/12/2017, I think there was confusion somehow stirred by the Ministry of Home Affairs itself as to the leader of TASO they were dealing with. It is not disputed that on 3/5/2017 TASO was banned by the Registrar of Societies as per testimonies of DW2-Paul Magolo. According to DW2, the communication regarding the ban imposed on TASO were addresses to the 1st appellant, who was recognized as the Chairman of the Board of Trustees of TASO. The Minister of Home Affairs also did the same in some of his correspondences.

However, according to the testimony of PW2- Nyaulingo Mlamlete, on 13/12/2017 he received a phone call from the Personal Secretary of the Minister for Home Affairs to collect a letter which was issued to him. The said letter was dated 11/12/2017 instructing him as Acting Chairman of to call a TASO meeting for election of TASO leadership within one month and

give the Minister feedback. This step was said to be the prerequisite for the Minister to consider the appeal against the ban, under section 19(2) of The Societies Act. Connected well with this testimony is the letter by the Minister of Home Affairs which admitted as **Exhibit P4**. Unlike the usual trend of addressing TASO letters to the 1st appellant, **Exhibit P4**, a letter dated 11/12/2017 was addressed to Acting Chairman of TASO. As per testimony of PW2, the appeal was under consideration by the Minister hence the election was to be organized as a prerequisite for unbanning TASO.

In a show of connectivity of evidence, PW2 implemented the directive of the Minister in Exhibit P4 and furnished him with feedback vide TASO TAIFA letter dated 10/1/2018. The Minister acknowledged the steps taken in line with the said letter but gave other directives afterwards. I said earlier on that the law requires each case to be decided on its own set of facts and obtaining circumstances. Under the stated circumstances, the trial court was justified to hold, as it did, that TASO registration was revoked but for as long as its ban was still under consideration by the appellate authority, which is the Minister of Home Affairs, its existence was recognized by the directives of the Minister towards unbanning it.

The same reasoning above justifies the decision of the trial court with regard to existence of the election held on 30/12/2017. It is not disputed that the Minister vide **Exhibit P4** instructed the Acting Chairman of TASO to organize the said election, as a prerequisite for unbanning TASO. **Exhibit P5** and **P6** proved that the election was done as directed by the Minister. The trial court correctly observed that the issue raised by Mr. Nyangarika was not on legality of the Minister's action. It was whether or not, there was

an election held on 30/12/2017. I cannot therefore indulge in the discussion of the legality of the Minister's directives at this stage, as I shall be dealing with a new matter.

With regard to the complaint that the trial Magistrate was bias, I don't agree with the arguments raised by the appellants' advocate to support this ground. In light of the evidence adduced, one would have reached the same decision as the trial court. The admission of the Constitution of TASO (Exhibit P3) which was cited as an example of bias should be understood in the context of the Court of Appeal decision in **AAR Insurance (T) Ltd vs. Beatus Kisusi** (Civil Appeal 67 of 2015) [2016] TZCA 191 (31 May 2016)), where it stated:

"We wish to state at this juncture that the function of admissibility of documentary exhibit is the domain of the trial court and not the parties to the pleadings. It is the trial Judge or Magistrate who will have to apply the governing law of admissibility of exhibits like whether the document is a primary of secondary."

As regard to other decisions made by the trial Magistrate which were allegedly to be unsupported by evidence, their basis could as well be inability to interpret the evidence rather than an intentional display of bias. The bottom line is that, by using the same facts as recorded in the proceedings, this court hasn't departed much from the decision reached by the trial court.

Despite the above observations, I find dots of injustice if the appellants will be condemned to paying the costs. Again, I have considered the facts and obtaining circumstances of this case. DW1-Edward Anthon Mwesiumo testified that he appointed the late Lt. (Rtd) Shabani Muyombo and his fellows by letter admitted in evidence as **Exhibit D1** to implement the directive of the Minister of Home Affairs. My perusal of Court records led me to a letter from the Registrar of Societies with Ref. No. SA. 7823/33 dated 3 May 2017 addressed to DW1, informing him of the decision to deregister TASO. The same letter guided DW1 that if they are not satisfied with the decision, they can appeal to the Minister for Home Affairs.

In the same vein, there is a letter in court's record dated 14th May 2018 addressed to DW1, whereby the Minister for Home Affairs was notifying DW1 his decision to unban TASO following an appeal letter sent to him by DW1 and other members of TASO. In the same letter, the Minister referred to his previous letter dated with Ref. No. S.A 7823 VOL.II/38 dated 11/12/2017 which was acted upon by PW2. These correspondences reveal that DW1 was acting for the interest of TASO.

Additionally, DW1 and DW2 -the late Lt. (Rtd) Shabani Muyombo categorically denied in their testimonies that DW2 was appointed the Chairman of TASO as *NIPASHE* Newspaper wrongly captioned. For these reasons, the appellants were wrongly dragged into a dispute which they did not create, even though they opposed the respondent's TASO membership. Under such circumstances, it will be unjust to condemn them to pay costs of the case. After all, as argued by Mr. Nyangarika, the appellants were declared by trial court not to be TASO leaders.

I stated earlier that the award of costs was in the legal precinct of the trial court. However, for purposes of justice I reverse the order of the trial court by ordering each party to pay its own costs.

In conclusion, the appeal is partially allowed to the extent that the order for award of costs is hereby replaced accordingly. And for purpose of avoiding endless litigation, I make no order as to costs for this appeal.

Ordered accordingly.

Dated at Dodoma this 15th day of August, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba", is written over the printed name.

ABDI S. KAGOMBA
JUDGE